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Bar Malaysia v Jabatan Pendaftaran Pertubuhan Malaysia

HIGH COURT (KUALA LUMPUR) — APPLICATION FOR JUDICIAL REVIEW WA-25–181–07 OF 2017
B AZIZAH NAWAWI J
20 SEPTEMBER 2017

C *Civil Procedure — Judicial review — Application for leave — To obtain certiorari — To obtain mandamus order — Declaration that society established illegal — Whether leave application contrary to rules of natural justice — Whether out of time to file judicial review application — Rules of Court 2012 O 53 r 3(6)*

D In May 2012, the respondent's branch in Selangor ('ROS Selangor') had registered Persatuan Siswazah Undang-Undang Malaysia ('PSUM') as a society under s 7(1) of the Societies Act 1966. Around mid to late 2012, ROS Selangor allowed PSUM to change their registration name to Persatuan Guaman Malaysia ('PGM') or Law Society of Malaysia ('LSM'). In March 2015, the
E applicant conducted a search on LSM at ROS Selangor and issued an objection letter to the respondent in July 2015 with regards to LSM's registration. In March 2016, the respondent and the applicant held a meeting regarding the applicant's objections against two registered societies, amongst other, LSM. The applicant continued to raise their objections vide letters dated in April
F 2016 to ROS Selangor. Further, the applicant's solicitors had issued another objection letter to ROS Selangor in May 2016. In March 2017, ROS Selangor had decided that LSM's name was different from the applicant and would not confuse the public. The decision was communicated to the applicant's solicitors on 7 April 2017. Being dissatisfied with the decision of ROS
G Selangor, the applicant applied for leave to commence judicial review proceedings against the respondent seeking for, amongst other, the following reliefs: (a) an order of certiorari to quash the respondent's decision on 31 March 2017 that the name of PGM or LSM was different from the applicant and did not confuse the public; (b) an order of mandamus directing the respondent to
H revoke LSM or PGM's registration as a society pursuant to its statutory duty under the Societies Act 1966 and change it back to 'Persatuan Siswazah Undang-Undang Malaysia' or Law Graduates Association of Malaysia; and (c) a declaration that LSM or PGM was an unlawful society pursuant to s 17 of the Societies Act 1966. The grounds which the respondent relied on were,
I amongst others, as followed: (i) that ROS Selangor had acted ultra vires of ss 2A and 7(3) of the Societies Act 1966 in arriving at the decision to maintain LSM's name and registration as a valid society; (ii) that the decision was unreasonable in the *Wednesbury* sense of view as: (1) LSM's name may confuse the public who assumed or may wrongly assume LSM was a part of or similar with the

applicant as the sole regulatory body for advocates and solicitors registered in Malaysia; (2) LSM's role was not clear and its establishment overlapped the applicant's function; (3) registration of LSM was unlawful as it was likely to deceive or manipulate members of the public or the applicant's members; and (iii) ROS Selangor's decision was unconstitutional under art 162 of the Federal Constitution as the respondent and ROS Selangor had failed to comply with the existing laws of the Societies Act 1966 and the Legal Profession Act 1976.

Held, dismissing the applicant's application:

(1) This court refused to grant leave to proceed for an order of certiorari to quash the respondent's decision which allowed the change of name from Persatuan Siswazah Undang-Undang Malaysia to LSM/PGM and/or to quash LSM/PGM's registration certificate dated 29 May 2012. Order 53 r 3(6) of the ROC 2012 provided that an application shall be made promptly and in any event within three months from the date when the grounds for the application first arose or when the decision was first communicated to the applicant provided that the court may, upon application and if it considered that there was a good reason for doing so, extend the period of three months. The court had no jurisdiction to hear the application for leave of the said order as the same were outside the time specified by O 53 r 3(6) of the ROC 2012 as there had been a delay of more than five years to file this application to challenge the registration of LSM/PGM as a society in 2012 (see paras 24, 26 & 30).

(2) The applicant did not make LSM/PGM a party in this judicial review application. Therefore, to allow leave in respect of the said prayers and to have the same proceed to substantive hearing would cause injustice to LSM/PGM as they would have denied a right to be heard before they were deregistered or nullified. The fact that an affected party may apply to intervene in the substantive hearing was not an answer to the fact that the applicant had filed this application seeking to deregister a duly registered society behind its back and in its absence. This application to deregister a duly registered society behind its back was clearly contrary to the rules of natural justice and s 42(1) of the Legal Profession Act 1976 (see paras 38–40).

[Bahasa Malaysia summary

Pada Mei 2012, cawangan responden di Selangor ('ROS Selangor') telah mendaftarkan Persatuan Siswazah Undang-Undang Malaysia ('PSUM') sebagai sebuah pertubuhan di bawah s 7(1) Akta Pertubuhan 1966. Sekitar pertengahan hingga akhir 2012, ROS Selangor membenarkan PSUM menukar nama pendaftaran mereka kepada Persatuan Guaman Malaysia ('PGM') atau Persatuan Undang-Undang Malaysia ('PUM'). Pada Mac 2015, pemohon membuat carian PUM di ROS Selangor dan mengeluarkan surat bantahan kepada responden pada bulan Julai 2015 berkaitan dengan

pendaftaran PUM. Pada bulan Mac 2016, responden dan pemohon mengadakan mesyuarat berkenaan dengan bantahan pemohon terhadap dua pertubuhan berdaftar, antara lain, PUM. Pemohon menyuarakan bantahan mereka secara berterusan melalui surat bertarikh pada April 2016 kepada ROS Selangor. Selanjutnya, peguamcara pemohon telah mengeluarkan surat bantahan kepada ROS Selangor pada Mei 2016. Pada bulan Mac 2017, ROS Selangor telah memutuskan bahawa nama PUM adalah berbeza daripada pemohon dan tidak akan mengelirukan orang ramai. Keputusan itu dikemukakan kepada peguamcara pemohon pada 7 April 2017. Tidak berpuas hati dengan keputusan ROS Selangor, pemohon memohon kebenaran untuk memulakan prosiding semakan kehakiman terhadap responden yang mencari, antara lain, relif berikut: (a) perintah certiorari untuk membatalkan keputusan responden pada 31 Mac 2017 bahawa nama PGM atau PUM adalah berbeza daripada pemohon dan tidak mengelirukan orang ramai; (b) perintah mandamus yang mengarahkan responden untuk membatalkan pendaftaran PUM atau PGM sebagai pertubuhan di bawah kewajipan statutori di bawah Akta Pertubuhan 1966 dan mengubah kembali kepada 'Persatuan Siswazah Undang-Undang Malaysia' atau 'Persatuan Graduan Undang-Undang Malaysia'; dan (c) perisytiharan bahawa PUM atau PGM adalah masyarakat yang tidak sah dari segi undang-undang s 17 Akta Pertubuhan 1966. Sebab-sebab yang diberi oleh responden adalah, antara lain: (i) bahawa ROS Selangor telah bertindak ultra vires ss 2A dan 7(3) Akta Pertubuhan 1966 dalam membuat keputusan untuk mengekalkan nama dan pendaftaran PUM sebagai pertubuhan yang sah; (ii) bahawa keputusan itu tidak munasabah dari segi pandangan pendapat *Wednesbury*: (1) nama PUM boleh mengelirukan orang awam yang menganggap atau salah anggap PUM adalah sebahagian atau serupa dengan pemohon sebagai badan pengawal selia tunggal untuk peguambela dan peguamcara yang berdaftar di Malaysia; (2) peranan PUM tidak jelas dan penubuhannya bertindih dengan fungsi pemohon; (3) pendaftaran PUM adalah menyalahi undang-undang kerana ia mungkin menipu atau memanipulasi ahli-ahli orang awam atau ahli-ahli pemohon; dan (iii) keputusan ROS Selangor adalah tidak berperlembagaan di bawah perkara 162 Perlembagaan Persekutuan kerana responden dan ROS Selangor gagal mematuhi undang-undang yang ada di bawah Akta Pertubuhan 1966 dan Akta Profesion Undang-Undang 1976.

Diputuskan, permohonan pemohon ditolak:

(1) Mahkamah ini enggan memberi kebenaran untuk meneruskan perintah certiorari untuk membatalkan keputusan responden yang membenarkan pertukaran nama dari Persatuan Siswazah Undang-Undang Malaysia ke PUM/PGM dan/atau membatalkan sijil pendaftaran PUM/PGM bertarikh 29 Mei 2012. Aturan 53 k 3(6) Kaedah-Kaedah Mahkamah 2012 dengan syarat bahawa suatu permohonan hendaklah dibuat dengan segera dan dalam apa jua keadaan dalam masa tiga bulan dari

tarikh alasan penghakiman untuk permohonan itu diberi atau apabila keputusan itu disampaikan kepada pemohon, apabila permohonan dan jika difikirkan bahawa ada sebab yang baik untuk berbuat demikian, melanjutkan tempoh tiga bulan. Mahkamah tidak mempunyai bidang kuasa untuk mendengar permohonan untuk meninggalkan perintah itu sebagaimana yang sama di luar masa yang ditentukan dalam A 53 k 3(6) Kaedah-Kaedah Mahkamah 2012 kerana terdapat kelewatan lebih daripada lima tahun untuk memfailkan permohonan ini untuk mencabar pendaftaran PUM/PGM sebagai sebuah masyarakat pada tahun 2012 (lihat perenggan 24, 26 & 30).

(2) Pemohon tidak menamakan PUM/PGM sebagai pihak dalam permohonan semakan kehakiman ini. Oleh itu, untuk membenarkan kebenaran berkenaan dengan perintah-perintah tersebut dan untuk meneruskan pendengaran yang substantif akan menyebabkan ketidakadilan kepada PUM/PGM kerana mereka akan dinafikan hak untuk didengar sebelum pendaftaran mereka dikeluarkan daripada di daftarkan atau dibatalkan. Hakikat bahawa pihak yang terlibat boleh memohon untuk mencelah dalam pendengaran substantif bukanlah jawapan kepada fakta bahawa pemohon telah memfailkan permohonan ini yang bertujuan untuk membatalkan pendaftaran suatu pertubuhan berdaftar secara dari belakang. Permohonan ini untuk membatalkan pendaftaran sebuah pertubuhan berdaftar di belakangnya jelas bertentangan dengan peraturan keadilan semula jadi dan s 42(1) Akta Profesion Undang-Undang 1976 (lihat perenggan 38–40).]

Notes

For cases on application for leave, see 2(3) *Mallal's Digest* (5th Ed, 2017 Reissue) paras 5950–5953.

Cases referred to

B Surinder Singh Kanda v The Government of the Federation of Malaya [1962] 1 MLJ 169; [1962] 1 LNS 14, PC (refd)

Malaysia Airline System Bhd v Wan Sa'adi Wan Mustafa [2013] MLJU 1636; [2014] 5 CLJ 10, CA (refd)

Mersing Omnibus Co Sdn Bhd v Minister of Labour and Manpower & Anor [1983] 2 MLJ 54, FC (refd)

Ravindran v Malaysian Examinations Council [1984] 1 MLJ 168, SC (refd)

Ridge v Baldwin [1964] AC 40, HL (refd)

WRP Asia Pacific Sdn Bhd v Tenaga Nasional Bhd [2012] 4 MLJ 296; [2012] 4 CLJ 478, FC (refd)

Wong Kin Hoong & Anor (suing for themselves and on behalf all of the occupants of Kampung Bukit Koman, Raub, Pahang) v Ketua Pengarah Jabatan Alam Sekitar & Anor [2013] 4 MLJ 161; [2013] 4 CLJ 193, FC (refd)

Legislation referred to

Federal Constitution art 162
Legal Profession Act 1976 ss 10, 11, 37, 41, 42, 42(1)(a)
Rules of Court 2012 O 53 rr 1, 1(1), 2, 2(2), 3, 3(2), (6), (7)
Rules of the High Court 1980 O 53 r 1A
Societies Act 1966 ss 2A, 3A, 7, 7(1), (3), 9(c), 13, 13(1)(c)(iv), 13A, 17, 41, 42
Societies Regulations 1984
Specific Relief Act 1950 Chapter VIII

Rafeeza Hamdan (Fahri & Co) for the applicant.
Haryati bt Ahmad (Federal Counsel, Attorney General's Chambers) for the respondent.

Azizah Nawawi J:

APPLICATION

[1] This is the applicant's application for leave to commence judicial review proceedings seeking the following reliefs:

(a) an order of certiorari to quash the following decisions immediately:

(i) the respondent's decision on 31 March 2017 that the name Persatuan Guaman Malaysia ('PGM') or Law Society of Malaysia ('LSM') is different from the applicant and does not confuse the public ('the decision'); and/or

(ii) the respondent's decision that allowed the change of name from Persatuan Siswazah Undang-Undang Malaysia to LSM/PGM; and/or

(iii) LSM/PGM's registration certificate dated 29 May 2012 with registration no PPM-015-10-29052012; and/or

(b) an order of mandamus directing the respondent to implement the followings immediately:

(i) to revoke LSM/PGM's registration as a society pursuant to its statutory duty under the Societies Act 1966 ('Act 335'); and/or;

(ii) to change LSM/PGM's name back to Persatuan Siswazah Undang-Undang Malaysia or Law Graduates Association of Malaysia; and/or

(iii) to reconsider the applicant's objection letters in accordance with ss 2A, 3A, 7, 9(c), 13, 13A, 17, 41 and 42 of the Act; and/or

(c) further or alternatively, for the following declarations:

(i) that LSM/PGM is an unlawful society pursuant to s 17 of Act 335; and/or

(ii) that the registration of LSM/PGM's name is unlawful and confuses the public; and/or

(iii) that the decision is null and void; and/or

(iv) that LSM/PGM's roles overlap with the applicant's; and/or

(v) that LSM/PGM's registration certificate dated 29 May 2012 is null and void; and/or

(d) any further and/or other relief and/or order that this court deems fit and just; and/or

(e) costs in the cause.

[2] The federal counsel, representing the Honourable Attorney General of Malaysia has no objection to the leave application.

[3] Having considered the application, this court has granted leave to the applicants in respect of prayer 1(a), 2(c) and 5.

[4] This court has rejected leave to proceed with prayer 1(b)(c), 2(a)(b), 3(a)(b)(c)(d)(e) and 4 of encl (1).

[5] The grounds of the application as stated in the statement pursuant to O 53 r 3 of the ROC 2012 are as follows:

(a) that ROS Selangor had acted ultra vires ss 2A and 7(3) of Act 335 in arriving at the decision to maintain LSM's name;

(b) that ROS Selangor had acted ultra vires ss 2A and 7(3) of Act 335 when maintaining LSM's registration as a valid society;

(c) that the decision is unreasonable in the *Wednesbury* sense of view based on the following:

(i) LSM's name may confuse the public who assumes or may wrongly assume LSM is a part of or similar with the applicant as the sole regulatory body for advocates and solicitors registered in Malaysia;

(ii) LSM's role is not clear and its establishment overlaps the applicant's function. Further LSM violates ss 10, 11 and 37 of the LPA as its membership is open to the public which allows members of the public who are not registered advocates and solicitors to purport as applicant's member; and

(iii) the registration of LSM is unlawful as it is likely to deceive or

manipulate members of the public or the applicant's members; and

(d) that based on the above grounds, the decision is therefore unconstitutional under art 162 of the Federal Constitution as the respondent and/or ROS Selangor had failed to comply with the existing laws of Act 335 and the LPA.

THE SALIENT FACTS

[6] From the statement pursuant to O 53 r 3(2) of the Rules of Court 2012 ('the ROC 2012'), the facts disclosed that the applicant is a body corporate established under s 41 of the Legal Profession Act 1976 ('the LPA 1976'). Under s 42 of the LPA 1976, the object and powers of the applicant includes the following:

> 42 Object and powers of the Bar
>
> (1) The purpose of the Malaysian Bar shall be —
>
> (a) to uphold the cause of justice without regard to its own interests or that of its members, uninfluenced by fear or favour ...

[7] The respondent is a department under the Ministry of Home Affairs which handles non-governmental organisations and political parties. The main function of the respondent is to administer and enforce Act 335, the Societies Regulations 1984 and policies regarding societies, control and monitor societies and to manage and keep records relating to the registration of societies and its registered branches.

[8] On 29 May 2012, the respondent's branch in Selangor ('the ROS Selangor') had registered Persatuan Siswazah Undang-Undang Malaysia as a society under s 7(1) of Act 335 with the registration No PPM-015–10–29052012.

[9] Subsequently, the ROS Selangor had allowed the Persatuan Siswazah Undang-Undang Malaysia's name to be changed to Persatuan Guaman Malaysia (PGM)/Law Society of Malaysia (LSM) around June–October 2012.

[10] On 5 March 2015, the applicant conducted a search on LSM at ROS Selangor. The applicant then issued an objection letter to the respondent on 23 July 2015 with regards to LSM's registration.

[11] On 21 March 2016, the respondent and the applicant held a meeting regarding the applicant's objections against two registered societies namely the Malaysian Lawyers Association ('the MLA') and LSM.

[12] The applicant continued to raise their objections vide letters dated 7 April 2016 to ROS Selangor (the second objection) and the respondent's Kuala Lumpur branch ('the ROS KL') respectively. In furtherance to that, the applicant's solicitor had issued another objection letter (the third objection) to both the ROS KL and ROS Selangor on 12 May 2016 and 30 May 2016 respectively.

[13] The ROS KL had cancelled the MLA's registration by a revocation order dated 2 September 2016 pursuant to s 13(1)(c)(iv) of Act 335.

[14] However, vide a letter dated 31 March 2017, ROS Selangor had decided that LSM's name is different from the applicant and does not confuse the public. The decision was communicated to the applicant's solicitor on 7 April 2017.

[15] Being dissatisfied with the decision of ROS Selangor, the applicant commenced this proceeding against the respondent only.

THE FINDINGS OF THE COURT

[16] Order 53 rr 1 and 2 of the ROC 2012, specifically provides the reliefs that can be applied in an application for judicial review. Order 53 r 1(1) reads:

> This Order shall govern all applications seeking the relief specified in paragraph 1 of the Schedule to the Courts of Judicature Act 19764 and for the purposes therein specified.

[17] The reliefs under para 1 of the Schedule include, inter alia, orders in the nature of certiorari, mandamus, prohibition, *quo warranto*. The relief of certiorari is to quash decisions while mandamus is a relief against an 'omission' and is subject to Chapter VIII of the Specific Relief Act 1950. Prohibition is a relief to check unlawful actions in the exercise of a public function whilst *a quo warranto* is used to challenge the appointment of a person to a public office in the case where he is not qualified to hold that office or his appointment suffers from any legal flaw.

[18] Added to that, O 53 r 2(2) provides that an application for judicial review may include a prayer for a declaration, either jointly or in the alternative in the same application if it relates to or is connected with the same subject matter.

[19] On the merits of the application for leave, learned counsel for the applicant did not file any written submission nor make any oral submission. The counsel merely states that leave must be granted.

[20] It is trite law that the test for leave to commence with judicial review was held by the Federal Court in *WRP Asia Pacific Sdn Bhd v Tenaga Nasional Bhd* [2012] 4 MLJ 296; [2012] 4 CLJ 478, to be as follows:

> Leave may be granted if the leave application is not thought of as frivolous, and if leave is granted, an arguable case of granting the reliefs sought at the substantive hearing may be the resultant outcome. A rider must be attached to the application though, ie, unless the matter for judicial review is amenable to judicial review no success may be envisaged.

[21] Therefore, despite the stand taken by the learned federal counsel in not opposing the application for leave, the onus is still on this court to ascertain whether each and every prayer of the application meets the threshold requirement in *WRP Asia Pacific Sdn Bhd*.

[22] Having considered each of the reliefs and the grounds supporting the applicant's application, this court has granted leave to the applicant to proceed with prayers 1(a), 2(c) and 5.

[23] This court has rejected leave to proceed with prayers 1(b)(c), 2(a)(b), 3(a)(b)(c)(d)(e) and 4 of encl (1).

Prayer 1(b)(c)

[24] This court had refused to grant leave to proceed with prayer 1(b)(c) of encl (1), which are for an order of certiorari to quash the respondent's decision which allowed the change of name from Persatuan Siswazah Undang-Undang Malaysia to LSM/PGM and/or to quash LSM/PGM's registration certificate dated 29 May 2012 with registration no PPM-015–10–29052012.

[25] It is not in dispute that what the applicant is seeking to quash is a decision of the respondent dated 29 May 2012 and another decision made between June–October 2012. Therefore, the applicant only commences this application to quash the decision made in 2012 more than five years later.

[26] This is against O 53 r 3(6) of the ROC 2012, which provides that an application for judicial review shall be made promptly and in any event within three months from the date when the grounds for the application first arose or when the decision is first communicated to the applicant provided that the court may, upon application and if it considers that there is a good reason for doing so, extend the period of three months (see O 53 r 3(7)).

[27] In the case of *Mersing Omnibus Co Sdn Bhd v Minister of Labour and Manpower & Anor* [1983] 2 MLJ 54, the Federal Court held that O 53 r 1A of

the Rules of the High Court 1980 provides that leave shall not be granted to apply for an order of certiorari unless the application for leave is made within six weeks after the date of the proceeding or the delay is accounted for to the satisfaction of the court or judge to whom the application was made.

[28] In *Ravindran v Malaysian Examinations Council* [1984] 1 MLJ 168 the Supreme Court held that:

> In our view the whole issue is clearly one of jurisdiction. In the event only the first consideration of the judge is relevant. Since the judge rejected the explanation for the delay it follows that the court had no jurisdiction to hear the application for leave for an order of certiorari. Whether the application for an order of certiorari had merits or not was irrelevant. This principle is implicit in *Mersing Omnibus Co Sdn Bhd v Minister of Labour and Manpower* [1983] 2 MLJ 54. *There had been no jurisdiction to hear the application for certiorari because* O 53 r 1A of the Rules of the High Court 1980 expressly directs that leave shall not be granted 'unless the application is made within six weeks after the date of the proceeding.

[29] The principles in the above cases have been reaffirmed by the Federal Court in *Wong Kin Hoong & Anor (suing for themselves and on behalf all of the occupants of Kampung Bukit Koman, Raub, Pahang) v Ketua Pengarah Jabatan Alam Sekitar & Anor* [2013] 4 MLJ 161; [2013] 4 CLJ 193, where Justice Raus Sharif PCA (as His Lordship then was) held as follows:

> [29] ... we are of the view that the principle in *Mersing Omnibus* and *Ravindran* is still good law. Whilst it is true that both *Mersing Omnibus* and *Ravindran* were decided under the old O 53 r 1A of the RHC but the principle in relation to an application to extend time to file an application for judicial review remains the same.
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> [30] In conclusion, *we are of the view that the time frame in applying for judicial review prescribed by the Rules is fundamental.* It goes to jurisdiction and once the judge had rejected the explanation for the delay for extension of time to apply for judicial review, it follows that the court no longer has the jurisdiction to hear the application for judicial review. Whether the application has merits or not, is irrelevant. (Emphasis added.)

[30] Therefore, premised on the cases above, this court has no jurisdiction to hear the application for leave in respect of prayer 1(b) and (c) as the same are outside the time specified by O 53 r 3(6) of the ROC 2012, as there had been a delay of more than five years to file this application to challenge the registration of LSM/PGM as a society in 2012.

Prayer (2)(a) and (b) and prayer (3)

[31] Prayer 2(a) and (b) are for an order of mandamus directing the respondent to revoke LSM/PGM's registration as a society and to change LSM/PGM's name back to Law Graduates Association of Malaysia.

[32] Prayer 3 of encl (1) is for declaratory orders against LSM/PGM, namely that it is an unlawful society, that its registration is unlawful, that its registration is null and void and that its roles overlap with the applicant.

[33] The said prayers are seeking orders to be made against LSM/PGM, who is not a party to this application. The applicant, Bar Malaysia is asking this court to deregister a duly registered society in its absence. Surely the Bar Malaysia is not asking this court to declare LSM/PGM as an unlawful society in its absence, as the same would amount to a breach of natural justice, as LSM/PGM cannot be condemned without being given a right to be heard.

[34] In *MP Jain's Administrative Law in Malaysia and Singapore* (3rd Ed), it is stated that natural justice has two components, the right to be heard (*audi alteram partem*), that is the rule that no one is to be condemned unheard; and the rule against bias (*nemo judex in causa sua)*, meaning that no one may be a judge in his own cause.

[35] In *Ridge v Baldwin* [1964] AC 40, Lord Morris held that the essential requirements of natural justice are that before someone is condemned, he is to have an opportunity of defending himself.

[36] In *B Surinder Singh Kanda v The Government of the Federation of Malaya* [1962] 1 MLJ 169; [1962] 1 LNS 14, the Privy Council said at p 172:

> In the opinion of Their Lordships, however, the proper approach is somewhat different. The rule against bias is another thing. The right to be heard is another. Those two rules are the essential characteristics of what is often called natural justice. They are the twin pillars supporting it. The Romans put it in two maxims: *Nemo judex in causa sua*: and *Audi alteram partem*. They have recently been put in the two words of impartiality and fairness. But they are separate concepts and are governed by separate considerations. In the present case Inspector Kanda complained of a breach of the second. He said his constitutional right had been infringed. He had been dismissed without being given a reasonable opportunity of being heard.
>
> *If the right to be heard is to be a real right which is worth anything, it must carry with it a right in the accused person to know the case which is made against him*. He must know what evidence has been given and what statement have been made affecting him; and then he must be given a fair hearing to correct or contradict them ... It follows, of *course that the judge or whoever has to adjudicate must not hear evidence or receive representations behind the back of the other.* The court will no enquire whether the evidence or representations did work to his prejudice. The risk of it is enough. *No one who has lost a case will believe he has been fairly treated if the other side has had access to the judge without his knowing*. (Emphasis added.)

[37] In *Malaysia Airline System Bhd v Wan Sa'adi Wan Mustafa* [2013] MLJU 1636; [2014] 5 CLJ 10, the issue before the Court of Appeal is whether

the respondent had been accorded a fair hearing before the Industrial Court despite the fact that he was not allowed to remain in the court during the latter part of the complainant's cross-examination which proceeded in his absence. Justice Clement Skinner JCA applied the principle in Surinder Kanda and held as follows:

> [27] *If the right to be heard is to mean anything to a person, it is a right to know what is being alleged against him and where the matter proceeds to a hearing in court,* a right to fair trial will include the right to hear everything which his accuser and anyone else may have to say in support of the accusations against him, *so that he has an opportunity to answer them.* Here, *the respondent was denied that very basic right* ... (Emphasis added.)

[38] In the present application, the applicant did not make LSM/PGM a party in this judicial review application, yet the applicant is seeking to have LSM/PGM deregistered and/or declared as an unlawful society and/or declared as null and void. Therefore, to allow leave in respect of the said prayers and to have the same proceed to substantive hearing would cause injustice to LSM/PGM as they would have been denied a right to be heard before they are deregistered or nullified.

[39] The fact that an affected party may apply to intervene in the substantive hearing is not an answer to the fact that the applicant has filed this application seeking to deregister a duly registered society behind its back and in its absence. Had it been any unknown applicant, it may be their excuse that they may not know the law. But the applicant is the Bar Malaysia, established under s 41 of the LPA 1976 for the purpose of, inter alia, 'upholding the cause of justice ... without fear or favour'. This application, to deregister a duly registered society behind its back, is clearly contrary to s 42(1)(a) of the LPA 1976.

[40] In the premises, leave to proceed with prayer 1 (b)(c) is dismissed as the same is out of time and leave to proceed with prayer (2)(a) and (b) and prayer (3) are dismissed as they are contrary to the rules of natural justice and s 42(1)(a) of the LPA 1976.

Applicant's application dismissed.

Reported by Lee TJ